

1 AN ACT
2 RELATING TO UNFAIR TRADE PRACTICES; PROHIBITING CERTAIN
3 UNSOLICITED EMAIL OR FACSIMILE TRANSMITTED ADVERTISING
4 MATERIAL; PROVIDING A PRIVATE CAUSE OF ACTION.
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6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 Section 1. Section 57-12-1 NMSA 1978 (being Laws 1967,
8 Chapter 268, Section 1) is amended to read:

9 "57-12-1. SHORT TITLE.--Chapter 57, Article 12 NMSA
10 1978 may be cited as the "Unfair Practices Act". "

11 Section 2. A new section of the Unfair Practices Act,
12 Section 57-12-23 NMSA 1978, is enacted to read:

13 "57-12-23. UNSOLICITED FACSIMILES OR EMAIL--
14 PROHIBITION.--

15 A. No person conducting business in this state
16 shall transmit by facsimile or cause to be transmitted by
17 facsimile an unsolicited advertisement unless:

18 (1) the person establishes a toll-free
19 telephone number that a recipient of the unsolicited
20 advertisement may call to notify the person not to send the
21 recipient any additional unsolicited advertisement; and

22 (2) the unsolicited advertisement includes
23 a statement, in at least nine-point type, informing the
24 recipient of the toll-free telephone number that the
25 recipient may call to notify the sender not to send the
recipient any additional unsolicited information.

1 B. No person conducting business in this state
2 shall email or cause to be emailed an unsolicited
3 advertisement unless:

4 (1) the person establishes a toll-free
5 telephone number or a valid sender-operated return email
6 address that a recipient of the unsolicited advertisement
7 may call or email to notify the person not to send the
8 recipient any additional unsolicited advertisement;

9 (2) the unsolicited advertisement includes
10 a statement, in the first text of the body of the message
11 and in the same size as the majority of the text of the
12 message, informing the recipient of the toll-free telephone
13 number or the email address that the recipient may call or
14 email to notify the sender not to send the recipient any
15 additional unsolicited advertisement;

16 (3) the subject line of the email includes
17 "ADV:" as the first four characters; and

18 (4) if the unsolicited advertisement
19 advertises realty, goods, services, intangibles or the
20 extension of credit that may only be viewed, purchased,
21 licensed, rented, leased or held in the possession by an
22 individual eighteen years of age or older, the subject line
23 of the email includes "ADV:ADLT" as the first eight
24 characters.

25 C. After notification by a recipient of the
recipient's request not to receive any further unsolicited
advertisement, no person conducting business in this state
shall transmit by facsimile, cause to be transmitted by

1 facsimile, email or cause to be emailed any unsolicited
2 advertisement to that recipient.

3 D. In the case of an employer who is the
4 registered owner of more than one email address, the
5 notification required by Subsection C of this section may be
6 given by the employer on behalf of all of the employees who
7 may use email addresses provided and controlled by the
8 employer.

9 E. No person shall knowingly or intentionally
10 assist in the transmission of an unsolicited advertisement
11 by facsimile or email if the person knows, or consciously
12 avoids knowing, that the initiator of the advertisement is
13 engaged, or intends to engage, in a violation of this
14 section.

15 F. A violation of a provision of this section
16 constitutes an unfair or deceptive trade practice.

17 G. As used in this section and Section 57-12-24
18 NMSA 1978:

19 (1) "transmit by facsimile", "cause to be
20 transmitted by facsimile", "email", "cause to be emailed" or
21 "assist in the transmission" does not include the
22 transmission of an unsolicited advertisement by a
23 telecommunications utility or an internet service provider
24 that merely carries the transmission over its network or who
25 acts or fails to act as allowed by contract or other law,
including but not limited to 47 USCA 230(c); and

(2) "unsolicited advertisement" means
information transmitted by facsimile or email that:

1 (a) advertises the lease, sale,
2 license, rental, gift offer or other disposition of any
3 realty, goods, services, intangibles or the extension of
4 credit; and

5 (b) is addressed to a recipient with
6 whom the sender does not have an existing business or
7 personal relationship; or

8 (c) is not sent at the request of, or
9 with the express consent of, the recipient."

10 Section 3. A new section of the Unfair Practices Act,
11 Section 57-12-24 NMSA 1978, is enacted to read:

12 "57-12-24. **UNSOLICITED FACSIMILES OR EMAIL--PRIVATE
13 REMEDY.--**

14 **A. Any person who receives an unsolicited**
15 **advertisement by facsimile or email may bring an action**
16 **against the sender of the unsolicited advertisement to**
17 **recover actual damages, including loss of profits, or**
18 **statutory damages equal to the greater of twenty-five**
19 **dollars (\$25.00) for each email or facsimile received or**
20 **five thousand dollars (\$5,000) for each day of violation,**
21 **plus reasonable attorney fees and costs if, prior to**
22 **receiving the unsolicited advertisement:**

23 (1) **the person who received the unsolicited**
24 **advertisement has notified the sender, pursuant to the**
25 **provisions of Section 57-12-23 NMSA 1978, of the person's**
request not to receive unsolicited advertisements; or

1 (2) the sender of the unsolicited
2 advertisement has entered into a written assurance of
3 discontinuance pursuant to Section 57-12-9 NMSA 1978.

4 B. A telecommunications utility or internet
5 service provider, injured by a violation of a provision of
6 Section 57-12-23 NMSA 1978 or this section, may recover
7 actual damages, including loss of profits, or statutory
8 damages equal to the greater of ten dollars (\$10.00) for
9 each facsimile or email transmitted or five thousand dollars
10 (\$5,000) for each day of violation plus reasonable attorney
11 fees and costs.

12 C. The remedies provided in this section are in
13 addition to any available remedies otherwise provided
14 by law. " _____
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